

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.362 of 2000.

Date of Decision :30th August,2007.

State of H.P.

...Appellant.

Versus:

Rajan Mittal.

...Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol,Judge.

Whether approved for reporting?¹

For the appellant:

Mr.A.Burathoki, Addl.Advocate General.

For Respondent.

None.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 16th March, 2000 passed by Sub Divisional Judicial Magistrate, Rampur Bushahr in Case No.8-2 of 99 titled State of H.P. Vs. Rajan Mittal acquitting the respondent.

On 30th October, 1998, an FIR No.167 of 1998 under Sections 279 and 338 I.P.C. was lodged with Police Station, Rampur Bushahr that Smt.Krishna Mani (PW-3) was injured in an accident which occurred due to rash and negligent driving of accused who was driving his Tata Safari resulting into causing grievous hurt on the body of Krishna Mani.

The matter was investigated by the Police and the statements of the witnesses were recorded and the complainant

¹ Whether reporters of Local Papers may be allowed to see the judgment?

was also given medical treatment in the hospital. Statement (Ext.PW-3/A) of the complainant was recorded under Section 154 Cr.P.C. to the effect that while she had come to Rampur to purchase domestic house hold articles at about 2.30 p.m., she reached at Chaudhary Adda, Rampur when Tata Safari (A/F) came from the back side which was being driven by the accused and due to rash and negligent driving, hit the complainant on her leg due to which she sustained grievous injuries. Head Constable Devi Singh (PW-7) visited the spot and prepared spot map (Ext.PW-7/A) and seized the vehicle. The said vehicle was got mechanically examined from the mechanic and obtained mechanical report (Ext.PW-2/A), photographs of the spot were also taken which are exhibited as PW-4/A to PW-4/D and the injury sustained by the complainant is proved through MLC report (Ext.PW-6/A), X-ray films (Ext.PW-6/B) and X-ray report (Ext.PW-6/C).

After completion of the investigation, challen was presented in the court and charges against the accused under Section 279 and 338 I.P.C. were framed wherein the accused pleaded not guilty and was put to trial.

During the trial, the witnesses, namely, Basant Kashyap (PW-1), Shamsher Singh (PW-2), Krishna Mani (PW-3), Jai Paul (PW-4), Raj Kumar (PW-5), Anupam Gupta (PW-6), H.C. Devi Singh (PW-7), Constable Kuldeep Singh (PW-8) and

H.C. Amar Nayan (PW-9) were examined. The statement of the accused under Section 313 Cr.P.C. was also recorded.

The Court below, after examining the statements of all the witnesses and more particularly complainant (PW-3) and Dr.Anupam Gupta (PW-6) came to the conclusion that the offence was not proved to have been committed by the accused and consequently the accused was acquitted.

There is no eye witness to the incident and, therefore, the deposition of complainant injured (PW-3) needs to be examined. She has deposed that she does not know from where and in what manner the vehicle had come. She cannot state as to whether the mistake was that of the driver. She has further stated that she even may be at fault. She has made a statement to the police that she had not remembered the number of the vehicle. She was walking unmindful of the traffic on the road. She has further stated that the incident took place at about 4 P.M.

PW-6 Dr.Anupam Gupta who medically examined the complainant and issued M.L.C. reports (Ext.PW-6/A, PW-6/B and PW-6/C) has deposed that injuries, though grievous in nature could have been caused by a fall on hard surface also.

In view of the statements of the aforesaid witnesses, it cannot be said that the accused person was driving the vehicle in a rash and negligent manner and that the accident had occurred with the vehicle which the accused was driving.

Thus, in my view, essential ingredients to cause commission of offence under Sections 279 and 338 I.P.C. are not made out.

I have gone through the entire material on record, carefully appreciated the evidence and came to the conclusion that the judgment of the trial Court is well reasoned which is fully supported by the material on record and in my view, there is no perversity in the same necessitating interference in an appeal against the acquittal.

The appeal is accordingly dismissed.

**(Sanjay Karol),
Judge.**

August 30, 2007(R)